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File No. O. Prev. of fragmentation
P 16 E Legal Deptt. /52

A **BRANCH**

Subject:— Opinions under the Bombay Prevention of fragmentation and Consolidation of Holdings Act 1947

File No. O Prev. of fragmentation/52

C O N T E N T S.

Legal Department File No. C. Prev. of Fragmentation/52.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions under the Bombay Prevention of fragmentation and Consolidation of Holdings Act, 1947.	
1.	C.No. 2166/11-2-52.	Question whether the Govt. Waste, Khar and Khajan lands are exempt from the operation of the Act.	1-4-
2.	C.No. 2179/11-2-52.	Re: Dispensary with the Publication of the maps of consolidatkemed scheme under Sec.21(1) of the Act.	5-6.
3.	C.No. 2167/11-2-52.	Question 1) Whether fragments of lands can be accepted as security for the grant of Tagai loans; 2) How can such fragments be dealt with it the borrowers commit default and the fragments so offered as security 3) What should be the valuation of fragments as against other lands.	7-10
4.	C.No. 5519/18-3-52.	G.R.R.D.No. 2189/49 dt 29-2-52 Re: Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.	11-14.
5.	C.No. 6994/3-5-52.	Re: Imposition of fine under Sec 9(2) on owners of land who transfer xxxx or partition lands so as to create fragments, whether the fine so imposed can be recovered in the manner said down in Sec. 187 of the Bombay Land Revenue Code. 1879.	15-18
6.	C.No. 9766/12-6-52.	Whether it is not competent for the Collector in the execution of a decree of a civil court to sell pieces of lands which are fragments within the meaning of the Act.	19-22

377

7.	O.No.12115/23-7-52.	35,22,32(1) and 33 Re: Revocation of Scheme. 20/29
8.	O.No.17363/21-10-52.	Question regarding exempting donations of agricultural lands by private owners to local authorities for non-agricultural use such as the erection of primary schools from the provisions of the Act. 25-:
9.	O.No.~~17032~~/17033/15-10-52.	Re: Difficulty under Sec 7 of the Act about the transfer of certain agricultural lands by owners for the erection of new school buildings in villages by way of gift. Question as to what steps should be taken to remove these difficulties. 27-28.
10.	O.No.17767/ 27-10-52.	Partition Re: Prohibition of fragments. 29-30
11.		R.D.No.8239/49 A of 21-12-50 Re: Warad court partition Darkhast No.694/45. Effecting of partition and handing over possession in the 31-38.

The question raised for the R.L.A. 's consideration is whether the Government Waste, Khar and Khajan lands are exempt from the operation of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

It is apprent from the preamble of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, that the Act is intended to prevent the fragmatation of agricultural holdings and to provide for solsolidation of agricultural holdings for the purpose of better cultivation thereof. "Land" as defined in section 2(5) means agricultural land, whether alienated or unalienated. Section 8 provides that no land in any local area shall be transferred or partitioned so as to create a fragment. It is apparent that the Act does not apply to non-agricultural holdings.

Assuming that the Government waste Khar and Khajan lands are in essence agricultural lands, the next question for consideration is whether the Bombay Preventionof Fragmentation and Consolidation of Holdings Act applies to these lands. It is a general principle that the Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an existing prerogative or interest. That principle will apply to Government. It is true that section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, is so very widely and worded that it applies to all kinds of agricultural lands whether owned by Government or by private persons. But in contruing section 8, section 9 cannot be ignored. Section 9(2) provides that the owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs.250/- as the Collector may, subject to the general orders of the State Government, direct. The imposition of penalty would take away the prerogative or right from the Crown and the provision is to be construed so as to exculde that effect. Further, the term"owner" has been defined in section 2(8) as meaning in

the case of unalienated land the occupant, and when such land has been mortgaged 'owner' means the mortgagor, in the case of alienated land, "owner" means the superior holder. Government is not the occupant of its land but its owner. The rights of an owner are far in excess of the rights of an occupant under the Bombay Land Revenue Code. The term "owner" in section 9(2) is to be construed as an occupant of the land. Consequently, section 9(2) would not apply to Government. Under section 10(1) any owner of a fragment may transfer it to the State Government on payment by the State Govt. of such compensation to persons possessing interest therein as the Collector may determine and thereupon the fragment shall vest absolutely in the State Government free from all encumbrances. Under sub-section (2) any such fragment may may be disposed of in accordance with the provisions of section 117-B of the Bombay Land Revenue Code, 1879; and under the latter provision in the event of other occupants refusing to take the land it shall be disposed of as the Collector shall deem fit. It is clear from these provisions that even a fragment which has been transferred to Government under section 10(1) would not be governed by the provisions of this Act if the adjoining owners refuse to purchase the land when offered by Government. It appears therefore, that, although there is no express provision in the Act that it does not apply to Government lands, it appears that by necessary implication the Act does not apply to Government lands.

Sd. P.M.Lad.
8/2.

C.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No.2166, dated the 11th February 1952.

VGP.16-6-56.

The principal ground on which the R.L.A. expressed his view on the last occasion against dispensing with the publication of the maps of finalised schemes in the Bombay Government Gazette was that the object underlying section 41(1) was to provide a permanent and reliable record of the rights of the various parties concerned. If the Revenue Department now considersfrom the administrative point of view that such publication can be dispensed with without causing any sort of inconvenience, it would be legally feasible to give effect to the proposals now made by that Department by suitably amending the Act.

Sd. P.N.Lad.
11/2

C.C.

Remembrancer of Legal Affairs.

U.R. to R.D.No.2179, dated the 11th February, 1952.

VGP. 16-5-56

The questions raised for the R.L.A.'s consideration are :-

(1) Whether fragments of lands can be accepted as security for the grant of tagai loans;

(2) how can such fragments be dealt with if the borrowers commit default and the fragments so offered as secutiry are required to be sold; and

(3) what should be the valuation of fragments as against other lands.

Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, provides that no land in any local area shall be transferred or partitioned so as to create a fragment. This provision prohibits the transfer or partition of agricultural land so as to create a fragment. The expression "transfer of land" has not been defined in the Act nor is it defined in the Bombay Land Revenue Code 1879. The expression "transfer of property" has been defined in section 5 of the Transfer of Property Act, but that definition would not be of much use as the term "property" has a wider signification than the term "land". "A transfer is an act or transaction by which property of one person is by him vested in another. The term 'transfer' means to convey or pass the right of one personover to another, unless the general meaning is restricted or limited by something accompanying it, as, for example, that the transfe is for a limited time or for a particular purpose" (see Iyer's Law Lexicon,p.1293). The object of the prohibition provided in subsection 8 is to facilite the merger of fragments in contiguous survey numbers or recognised sub-divisions of survey numbers. Consequently, the tem "transfer" as used in section 8 appears to have the meaning of conve yance by way of sale or gist. The advance of tagai loans on the securi of agricultural lands would involve no such transfer. Consequently, section 8 does not appear to be a bar to Government advancing tagai loans on the security of fragments.

The tagai loans can be recovered as arrears of land revenue. Section 14 provides that notwithstanding anything contained in any law for the time being in force, no land shall be sold at any such sale held under the orders of any court so as to leave.....

leave a fragment. This provision does not apply to sales under the Bombay Land Revenue Code. Consequently, there would be no legal objection to Government recovering the Sagai loans by sale of fragments on the security of which the loans have been advanced. The sales however, should be conducted so as to in respect the principle underlying section 14.

The third question dos not survive.

Sd. P.M.Lad.
9/2

O.O.

Remembrancer of Legal Affairs.

U.R. to R.D.No.2167, dated the 11th February 1952.

VGP. 16-6-56.

7515 of 16-4-1952.

Attention is invited to 'A' in the R.D., Dy.Secy.'s note at page 11 ante. Sub-section (2) of section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947. empowers the Collector to impose a fine not exceeding Rs.250/- on owners of land who transfer or partition lands so as to create fragements. There is no provision in the Act that the amount of fine so imposed shall be recoverable as an arrear of land revenue. The question raised for consideration is whether the fine imposed under this section can be recovered in the manner mlaid down in section 187 of the Bombay Land Revenue Code,1879.

Sd/
D.S. (Opinion).

Sd/ P.M.Lad.
Remembrancer of Legal Affairs.

EKK.22/6/

OFFICE OF THE R.L.A.

The fine can be recovered under the provisions of section 26 of the Bombay General Clauses Act, 1904 The recovery cannot be made under section 187 of the Bombay Land Revenue Code.

Sd. P.M.Lad.
2/5.

e.e.

Remembrancer of Legal Affairs.

U.R. to R&D. No.6994, dated the 3rd May 1952.

VGP. 16-6-56.

It is stated by the Collector that the lands ordered to be sold in execution are already fragments. As held in R.L.A's opinion No. 137 of 24-5-51, if the decree has been transferred to the Collector for execution, the Collector should bring the provisions of sections 7,8 and 10 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 to the notice of the Court and state that in view of the said provisions the decree is not capable of execution.

Sd. J.R.Dhurandhar.
11/7.

o.c.

[redacted]

Additional Secretary to Government.

U.R. to R.D.No. 9766, dated the 12th June 1952.

VCP. 16-6-52.

Revocation of scheme.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947- Sections 22,32(1) and 33.

Section 23 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 enacts that "as soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them the scheme shall be deemed to have come into force". Under section 32(1) of the Act, it is only when the scheme has come into force that the State Govt. can vary it of it is defective on account of an error, irregularity or informality. In the present case as the scheme has not been brought into force at all, it would not be competent to Government to vary it. The only course left open, therefore, would be to undertake a second scheme and when such a scheme is prepared, published and confirmed in accordance with the Act the present scheme would stand revoked under section 33 of the Act. The view taken by R.D. is correct.

Sd. P.M.Lad.
23/7

c.c.

Remembrancer of Legal Affairs.

U.R. to R.D.No.12115, dated the 23rd July 1952.

VCP. 16-6-56.

If donations of agricultural lands by private owners to local authorities for non-agricultural use such as the erection of primary schools are to be exempted from the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, the Act will have to be amended.

Sd. P.N.Lad.
21/10.

C.C.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.17363/A dated the 21st October 1953.

VGP. 16-6-56.

Office of the R.L.A.

In his opinion No.2166, dated 12th February 1952 the RL.A. has opined that the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, does not apply to non-agricultural holdings. In his opinion No. 6735 dated 27th April 1951, the Additional Secretary to Government (Legal Department) has opined that section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would not be attracted and there would be no legal objection to the Prant Officer granting permission to Shri Madhao to convert 2 acres from his holding for a non-agricultural purpose and it would not be contrary to the provisions of the Act. Reading these opinions together it would be clear that section 7(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would not be attracted if the holder first gets a part of his holding converted to non-agricultural purpose and then transfers it to anyxxxxx person even though the land remaining with the occupant after such transfer would be a fragment within the meaning of the Act. Consequently, the President of the Khira Rx District Local Board, Nadiad, may be asked to advise the donors to get the pieces of lands first converted to non-agricultural purpose and the transfer then to the District Local Board for the erection of school buildings.

Sd. P.H.Lad.
13/10.

S.O.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.17033/A dated the 25th October 1952.

VGP. 16-6-56.

Partition of fragments Bombay Prevention of Fragmentation Act, 1947

Additional Secretary's Opinion No.13471 dated 12-8-51.

The partition in this case is clearly illegal as it contravenes the provisions of the Bombay Prevention of Fragmentation Act, 1947. It is not clear from the papers whether the Collector has returned the proceedings to the Civil Court in this case. If he has not done so, he may cancel the order of partition and return the papers to the Court pointing out the incapability of execution of the decree. If the papers are already returned to the Court the Collector may report the facts and request a re-transfer of the proceedings with revised orders for partitioning of the lands in accordance with the provisions of the Bombay Prevention of Fragmentation Act (vide Additional Secretary's Opinion No.13471 dated 22-8-1951 As regards Record of Rights, the new entries therein will have to be cancelled as the partition was effected in contravention of the law and the original position will have to be restored. That may however be done after the Court's orders are received.

Sd. P.M.Lad.
25/10

e.e.

Remembrancer of Legal Affairs.

U.R. to R.D.No.17767/A dated the 27th Oct. 1952.

VGP. 16-6-56.

Office of the Remembrancer of Legal Affairs.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Section 5(3), 8 and 11. Code of Civil Procedure 1908 Section 54.

Under section 5 sub-section 1 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, Government has the power to determine the standard area for each class of land in a local area and under sub-section (3) the standard area thus determined has to be notified. Section 8 provides that no land in any local area shall be transferred or partitioned so as to create a fragment. Section 11 provides that when a decree is transferred ~~xxxx~~ to the Collector under section 54 on the Code of Civil Procedure, 1908, for the partition of an undivided estate assessed to the payment of revenue to the Crown in any local area for which standard areas have been fixed, or for a separate possession of share of such an estate, no such partition or separation shall be made so as to create a fragment. It is clear from these provisions that section 8 prohibits a general partition that ~~xxxxxxxxxx~~ while section 11 prohibits a partition through the Court so as to create a fragment. Although partition contemplated by section 8 relates to a general partition, that privision will have to be read with section 11 when it relates to a partition through the Civil Court. The partition contemplated by section 54 of the Civil Prod Procedure Code is not confined to a mere division of the lands but includes also the delivery of the shares to their respective allottees, thus completely carrying out the partition (See XI Bombay, 668, A.I.R. 1927 Nagpur, 300). Consequently, partition through the Civil Court would not be considered to be complete until possession of the shares

shares to the respective allottees has been given. In the present case no doubt the District Inspector of Land Records did partition the land and the Collector sanstioned the partition But, as stated above, since delivery of the possession was not given, the partition could not be deemed to have been complete. Beefeore it was thus completed, a notification was issued under section 5(3) of the Act fixing the standard area with the result that if the allotment of the shares contravend the previsions of sections 8 and 11 that is to day, if the area allotted to each sharer were less than the Standard area, the partition could be deemed to have been made so as to create a fragment within the meaning of section 11. Such partition would, therefore, be in contravention of the provisions of the Act and cannot be recognised.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17066 dated the 2nd December 1950.

VGP. 18-6-56.